



Sen. William R. Haine

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LRB099 09671 EGJ 48644 a

1 AMENDMENT TO HOUSE BILL 3211

2 AMENDMENT NO. _____. Amend House Bill 3211, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Illinois Insurance Code is amended by
6 changing Sections 193, 531.03, 531.05, 531.07, 531.08, 531.09,
7 531.10, and 531.14 as follows:

8 (215 ILCS 5/193) (from Ch. 73, par. 805)

9 Sec. 193. Duties of Director as liquidator; sales;
10 reinsurance.

11 (1) Upon the entry of an order directing liquidation, the
12 Director shall immediately proceed to liquidate the property,
13 business, and affairs of the company. The Director is hereby
14 authorized to deal with the property, business, and affairs of
15 the company in his name as Director, or, if the court shall so
16 order, in the name of the company.

1 (2) The Director may, subject to the approval of the court,
2 sell or otherwise dispose of the real and personal property, or
3 any part thereof, and sell or compromise all debts or claims
4 owing to the company, except that whenever the value of any
5 real or personal property or the amount of any debt owing to
6 the company does not exceed \$25,000, the Director may sell,
7 dispose of, compromise, or compound the same upon such terms as
8 the Director deems to be in the best interest of the company
9 without obtaining approval of the court.

10 (3) The Director may bring any action, claim, suit, or
11 proceeding against any director or officer of the company or
12 against any other person with respect to that person's dealings
13 with the company including, but not limited to, prosecuting any
14 action, claim, suit, or proceeding on behalf of the creditors,
15 members, policyholders, or shareholders of the company.
16 Nothing in this subsection shall be construed to affect the
17 standing of the Illinois Insurance Guaranty Fund, the Illinois
18 Life and Health Insurance Guaranty Association, or the Illinois
19 Health Maintenance Organization Guaranty Association to sue or
20 be sued under applicable law.

21 (4) In order to preserve so far as possible the rights and
22 interests of the policyholders of the company whose contracts
23 were cancelled by the liquidation order and of such other
24 creditors as may be possible, the Director may solicit a
25 contract or contracts whereby a solvent company or companies
26 will agree to assume in whole, or in part, or upon a modified

1 basis, the liabilities owing to said former policyholders or
2 creditors. The Director may, subject to paragraph (h) of
3 subsection (11) of Section 531.08 ~~531.08(h)~~ of this Code or
4 Section 6-8 of the Health Maintenance Organization Act, cede or
5 reinsure all or so much as may be necessary of the in-force
6 business to another company using assets of the liquidated
7 company to pay therefor in preference to satisfying other
8 obligations or creditors. The Director may assign any rights or
9 interests of the company to receive reinsurance proceeds for
10 losses to the Illinois Life and Health Insurance Guaranty
11 Association, the Illinois Health Maintenance Organization
12 Guaranty Association or any similar organization in any other
13 state. If, after a full hearing upon a petition filed by the
14 Director, the court shall find that the Director endeavored to
15 obtain the best contract for the benefit of said parties in
16 interest, and if the said Director shall report to the court
17 that he is ready and willing to enter into a contract and
18 submit a copy thereof to the court, the court shall examine the
19 procedure and acts of the Director, and if the court shall find
20 that the best possible contract in the interests of said
21 parties has been obtained and that it is best for the interests
22 of said parties that said contract be entered into, the court
23 shall by written order approve the acts of the Director and
24 authorize him to execute said contract.

25 (5) In recognition of the rights of policyholders whose
26 "claims made" contracts were cancelled by the liquidation

1 order, he may, in his discretion, permit such policyholders to
2 purchase an extended discovery period which is subject to the
3 limitations in this Article. The policyholder shall pay to the
4 liquidator a premium which is appropriate for the rights
5 purchased as determined by the liquidator and approved by the
6 court. No extended discovery period purchased before or after
7 the entry of the liquidation order shall extend the time to
8 file claims as set by the court pursuant to Section 208 of this
9 Code. Claims accruing by virtue of such extended discovery
10 period shall be treated as any other claim under Article XXXIV
11 of this Code, and shall be subject to the limitations,
12 exclusions and conditions in the Illinois Insurance Guaranty
13 Fund Act and in the laws governing similar organizations in
14 other states.

15 (6) The Director is authorized to cancel policies, bonds,
16 and contracts of insurance subject to court approval.

17 (7) All persons, companies, and entities shall immediately
18 turn over to the Director all unearned premium that has been
19 collected by or on behalf of the company and all earned premium
20 owing the company unless otherwise directed in writing by the
21 Director or by court order. Within 30 days of the date of a
22 written request of the Director, those persons, companies, and
23 entities shall submit affidavits verifying amounts collected
24 by, on behalf of, or due and owing the company and further
25 shall provide copies of all premium fund trust account
26 information and such other applicable documentation as

1 requested by the Director. Nothing in this subsection shall be
2 construed to affect the rights of (i) the Illinois Life and
3 Health Insurance Guaranty Association to collect premium under
4 subsection (4) ~~item (6)~~ of Section 531.08 of this Code or (ii)
5 the Illinois Health Maintenance Organization Guaranty
6 Association to collect premium under item (11) of Section 6-8
7 of the Health Maintenance Organization Act.

8 (8) The amount recoverable by the Director from a reinsurer
9 shall not be reduced or diminished as a result of the entry of
10 an order of liquidation notwithstanding any provision in the
11 reinsurance contract or other such agreement. Payment made by a
12 reinsurer to or on behalf of an insured of the company shall
13 not diminish the reinsurer's obligation to the company except
14 when the reinsurance agreement lawfully provides for payment to
15 or on behalf of the company's insured by the reinsurer. All
16 reinsurance contracts to which the company is a party, which do
17 not contain the provisions required with respect to the
18 obligation of a reinsurer in the event of insolvency of the
19 reinsured to obtain credit for reinsurance or pursuant to other
20 applicable statutes, shall contain or be construed to contain
21 all of the following provisions:

22 (a) Upon the entry of an order of liquidation and
23 notwithstanding the Director's failure to pay all or a
24 portion of a claim, the reinsurance obligation shall be due
25 and owing to the Director on the basis of claims allowed in
26 the liquidation proceeding. The reinsurer shall submit the

1 amounts due and owing directly to the company as ceding
2 insurer or to the Director.

3 (b) The Director shall give written notice or arrange
4 for the giving of written notice to reinsurers or their
5 agents of the pendency of a claim against the company
6 indicating the policy or bond reinsured within a reasonable
7 time after the claim is filed. The reinsurer may interpose,
8 at its own expense, in the proceeding where the claim is to
9 be adjudicated, any defenses that it may deem available to
10 the company or the Director.

11 (Source: P.A. 88-297; 89-206, eff. 7-21-95.)

12 (215 ILCS 5/531.03) (from Ch. 73, par. 1065.80-3)

13 Sec. 531.03. Coverage and limitations.

14 (1) This Article shall provide coverage for the policies
15 and contracts specified in paragraph (2) of this Section:

16 (a) to persons who, regardless of where they reside
17 (except for non-resident certificate holders under group
18 policies or contracts), are the beneficiaries, assignees
19 or payees of the persons covered under subparagraph (1) (b),
20 and

21 (b) to persons who are owners of or certificate holders
22 under the policies or contracts (other than unallocated
23 annuity contracts and structured settlement annuities) and
24 in each case who:

25 (i) are residents; or

1 (ii) are not residents, but only under all of the
2 following conditions:

3 (A) the insurer that issued the policies or
4 contracts is domiciled in this State;

5 (B) the states in which the persons reside have
6 associations similar to the Association created by
7 this Article;

8 (C) the persons are not eligible for coverage
9 by an association in any other state due to the
10 fact that the insurer was not licensed in that
11 state at the time specified in that state's
12 guaranty association law.

13 (c) For unallocated annuity contracts specified in
14 subsection (2), paragraphs (a) and (b) of this subsection
15 (1) shall not apply and this Article shall (except as
16 provided in paragraphs (e) and (f) of this subsection)
17 provide coverage to:

18 (i) persons who are the owners of the unallocated
19 annuity contracts if the contracts are issued to or in
20 connection with a specific benefit plan whose plan
21 sponsor has its principal place of business in this
22 State; and

23 (ii) persons who are owners of unallocated annuity
24 contracts issued to or in connection with government
25 lotteries if the owners are residents.

26 (d) For structured settlement annuities specified in

1 subsection (2), paragraphs (a) and (b) of this subsection
2 (1) shall not apply and this Article shall (except as
3 provided in paragraphs (e) and (f) of this subsection)
4 provide coverage to a person who is a payee under a
5 structured settlement annuity (or beneficiary of a payee if
6 the payee is deceased), if the payee:

7 (i) is a resident, regardless of where the contract
8 owner resides; or

9 (ii) is not a resident, but only under both of the
10 following conditions:

11 (A) with regard to residency:

12 (I) the contract owner of the structured
13 settlement annuity is a resident; or

14 (II) the contract owner of the structured
15 settlement annuity is not a resident but the
16 insurer that issued the structured settlement
17 annuity is domiciled in this State and the
18 state in which the contract owner resides has
19 an association similar to the Association
20 created by this Article; and

21 (B) neither the payee or beneficiary nor the
22 contract owner is eligible for coverage by the
23 association of the state in which the payee or
24 contract owner resides.

25 (e) This Article shall not provide coverage to:

26 (i) a person who is a payee or beneficiary of a

1 contract owner resident of this State if the payee or
2 beneficiary is afforded any coverage by the
3 association of another state; or

4 (ii) a person covered under paragraph (c) of this
5 subsection (1), if any coverage is provided by the
6 association of another state to that person.

7 (f) This Article is intended to provide coverage to a
8 person who is a resident of this State and, in special
9 circumstances, to a nonresident. In order to avoid
10 duplicate coverage, if a person who would otherwise receive
11 coverage under this Article is provided coverage under the
12 laws of any other state, then the person shall not be
13 provided coverage under this Article. In determining the
14 application of the provisions of this paragraph in
15 situations where a person could be covered by the
16 association of more than one state, whether as an owner,
17 payee, beneficiary, or assignee, this Article shall be
18 construed in conjunction with other state laws to result in
19 coverage by only one association.

20 (2)(a) This Article shall provide coverage to the persons
21 specified in paragraph (1) of this Section for direct, (i)
22 nongroup life, health, annuity and supplemental policies, or
23 contracts, (ii) for certificates under direct group policies or
24 contracts, (iii) for unallocated annuity contracts and (iv) for
25 contracts to furnish health care services and subscription
26 certificates for medical or health care services issued by

1 persons licensed to transact insurance business in this State
2 under the Illinois Insurance Code. Annuity contracts and
3 certificates under group annuity contracts include but are not
4 limited to guaranteed investment contracts, deposit
5 administration contracts, unallocated funding agreements,
6 allocated funding agreements, structured settlement
7 agreements, lottery contracts and any immediate or deferred
8 annuity contracts.

9 (b) This Article shall not provide coverage for:

10 (i) that portion of a policy or contract not guaranteed
11 by the insurer, or under which the risk is borne by the
12 policy or contract owner;

13 (ii) any such policy or contract or part thereof
14 assumed by the impaired or insolvent insurer under a
15 contract of reinsurance, other than reinsurance for which
16 assumption certificates have been issued;

17 (iii) any portion of a policy or contract to the extent
18 that the rate of interest on which it is based or the
19 interest rate, crediting rate, or similar factor is
20 determined by use of an index or other external reference
21 stated in the policy or contract employed in calculating
22 returns or changes in value:

23 (A) averaged over the period of 4 years prior to
24 the date on which the member insurer becomes an
25 impaired or insolvent insurer under this Article,
26 whichever is earlier, exceeds the rate of interest

1 determined by subtracting 2 percentage points from
2 Moody's Corporate Bond Yield Average averaged for that
3 same 4-year period or for such lesser period if the
4 policy or contract was issued less than 4 years before
5 the member insurer becomes an impaired or insolvent
6 insurer under this Article, whichever is earlier; and

7 (B) on and after the date on which the member
8 insurer becomes an impaired or insolvent insurer under
9 this Article, whichever is earlier, exceeds the rate of
10 interest determined by subtracting 3 percentage points
11 from Moody's Corporate Bond Yield Average as most
12 recently available;

13 (iv) any unallocated annuity contract issued to or in
14 connection with a benefit plan protected under the federal
15 Pension Benefit Guaranty Corporation, regardless of
16 whether the federal Pension Benefit Guaranty Corporation
17 has yet become liable to make any payments with respect to
18 the benefit plan;

19 (v) any portion of any unallocated annuity contract
20 which is not issued to or in connection with a specific
21 employee, union or association of natural persons benefit
22 plan or a government lottery;

23 (vi) an obligation that does not arise under the
24 express written terms of the policy or contract issued by
25 the insurer to the contract owner or policy owner,
26 including without limitation:

1 (A) a claim based on marketing materials;

2 (B) a claim based on side letters, riders, or other
3 documents that were issued by the insurer without
4 meeting applicable policy form filing or approval
5 requirements;

6 (C) a misrepresentation of or regarding policy
7 benefits;

8 (D) an extra-contractual claim; or

9 (E) a claim for penalties or consequential or
10 incidental damages;

11 (vii) any stop-loss insurance, as defined in clause (b)
12 of Class 1 or clause (a) of Class 2 of Section 4, and
13 further defined in subsection (d) of Section 352;

14 (viii) any policy or contract providing any hospital,
15 medical, prescription drug, or other health care benefits
16 pursuant to Part C or Part D of Subchapter XVIII, Chapter 7
17 of Title 42 of the United States Code (commonly known as
18 Medicare Part C & D) or any regulations issued pursuant
19 thereto;

20 (ix) any portion of a policy or contract to the extent
21 that the assessments required by Section 531.09 of this
22 Code with respect to the policy or contract are preempted
23 or otherwise not permitted by federal or State law;

24 (x) any portion of a policy or contract issued to a
25 plan or program of an employer, association, or other
26 person to provide life, health, or annuity benefits to its

1 employees, members, or others to the extent that the plan
2 or program is self-funded or uninsured, including, but not
3 limited to, benefits payable by an employer, association,
4 or other person under:

5 (A) a multiple employer welfare arrangement as
6 defined in 29 U.S.C. Section 1002 ~~29 U.S.C. Section~~
7 ~~1144~~;

8 (B) a minimum premium group insurance plan;

9 (C) a stop-loss group insurance plan; or

10 (D) an administrative services only contract;

11 (xi) any portion of a policy or contract to the extent
12 that it provides for:

13 (A) dividends or experience rating credits;

14 (B) voting rights; or

15 (C) payment of any fees or allowances to any
16 person, including the policy or contract owner, in
17 connection with the service to or administration of the
18 policy or contract;

19 (xii) any policy or contract issued in this State by a
20 member insurer at a time when it was not licensed or did
21 not have a certificate of authority to issue the policy or
22 contract in this State;

23 (xiii) any contractual agreement that establishes the
24 member insurer's obligations to provide a book value
25 accounting guaranty for defined contribution benefit plan
26 participants by reference to a portfolio of assets that is

1 owned by the benefit plan or its trustee, which in each
2 case is not an affiliate of the member insurer;

3 (xiv) any portion of a policy or contract to the extent
4 that it provides for interest or other changes in value to
5 be determined by the use of an index or other external
6 reference stated in the policy or contract, but which have
7 not been credited to the policy or contract, or as to which
8 the policy or contract owner's rights are subject to
9 forfeiture, as of the date the member insurer becomes an
10 impaired or insolvent insurer under this Code, whichever is
11 earlier. If a policy's or contract's interest or changes in
12 value are credited less frequently than annually, then for
13 purposes of determining the values that have been credited
14 and are not subject to forfeiture under this Section, the
15 interest or change in value determined by using the
16 procedures defined in the policy or contract will be
17 credited as if the contractual date of crediting interest
18 or changing values was the date of impairment or
19 insolvency, whichever is earlier, and will not be subject
20 to forfeiture; or

21 (xv) that portion or part of a variable life insurance
22 or variable annuity contract not guaranteed by an insurer.

23 (3) The benefits for which the Association may become
24 liable shall in no event exceed the lesser of:

25 (a) the contractual obligations for which the insurer
26 is liable or would have been liable if it were not an

1 impaired or insolvent insurer, or

2 (b) (i) with respect to any one life, regardless of the
3 number of policies or contracts:

4 (A) \$300,000 in life insurance death benefits, but
5 not more than \$100,000 in net cash surrender and net
6 cash withdrawal values for life insurance;

7 (B) in health insurance benefits:

8 (I) \$100,000 for coverages not defined as
9 disability insurance or basic hospital, medical,
10 and surgical insurance or major medical insurance
11 or long-term care insurance, including any net
12 cash surrender and net cash withdrawal values;

13 (II) \$300,000 for disability insurance and
14 \$300,000 for long-term care insurance ~~as defined~~
15 ~~in Section 351A-1 of this Code;~~ and

16 (III) \$500,000 for basic hospital medical and
17 surgical insurance or major medical insurance;

18 (C) \$250,000 in the present value of annuity
19 benefits, including net cash surrender and net cash
20 withdrawal values;

21 (ii) with respect to each individual participating in a
22 governmental retirement benefit plan established under
23 Sections 401, 403(b), or 457 of the U.S. Internal Revenue
24 Code covered by an unallocated annuity contract or the
25 beneficiaries of each such individual if deceased, in the
26 aggregate, \$250,000 in present value annuity benefits,

1 including net cash surrender and net cash withdrawal
2 values;

3 (iii) with respect to each payee of a structured
4 settlement annuity or beneficiary or beneficiaries of the
5 payee if deceased, \$250,000 in present value annuity
6 benefits, in the aggregate, including net cash surrender
7 and net cash withdrawal values, if any; or

8 (iv) with respect to either (1) one contract owner
9 provided coverage under subparagraph (ii) of paragraph (c)
10 of subsection (1) of this Section or (2) one plan sponsor
11 whose plans own directly or in trust one or more
12 unallocated annuity contracts not included in subparagraph
13 (ii) of paragraph (b) of this subsection, \$5,000,000 in
14 benefits, irrespective of the number of contracts with
15 respect to the contract owner or plan sponsor. However, in
16 the case where one or more unallocated annuity contracts
17 are covered contracts under this Article and are owned by a
18 trust or other entity for the benefit of 2 or more plan
19 sponsors, coverage shall be afforded by the Association if
20 the largest interest in the trust or entity owning the
21 contract or contracts is held by a plan sponsor whose
22 principal place of business is in this State. In no event
23 shall the Association be obligated to cover more than
24 \$5,000,000 in benefits with respect to all these
25 unallocated contracts.

26 (3.1) Notwithstanding the provisions of subsection (3), in

1 ~~In~~ no event shall the Association be obligated to cover more
2 than (1) an aggregate of \$300,000 in benefits with respect to
3 any one life under subparagraphs (i), (ii), and (iii) of ~~this~~
4 paragraph (b) of subsection (3) except with respect to benefits
5 for basic hospital, medical, and surgical insurance and major
6 medical insurance under item (B) of subparagraph (i) of ~~this~~
7 paragraph (b) of subsection (3), in which case the aggregate
8 liability of the Association shall not exceed \$500,000 with
9 respect to any one individual or (2) with respect to one owner
10 of multiple nongroup policies of life insurance, whether the
11 policy owner is an individual, firm, corporation, or other
12 person and whether the persons insured are officers, managers,
13 employees, or other persons, \$5,000,000 in benefits,
14 regardless of the number of policies and contracts held by the
15 owner.

16 (3.2) The limitations set forth in subsections (3) and
17 (3.1) ~~this subsection~~ are limitations on the benefits for which
18 the Association is obligated before taking into account either
19 its subrogation and assignment rights or the extent to which
20 those benefits could be provided out of the assets of the
21 impaired or insolvent insurer attributable to covered
22 policies. The costs of the Association's obligations under this
23 Article may be met by the use of assets attributable to covered
24 policies or reimbursed to the Association pursuant to its
25 subrogation and assignment rights.

26 (4) In performing its obligations to provide coverage under

1 Section 531.08 of this Code, the Association shall not be
2 required to guarantee, assume, reinsure, or perform or cause to
3 be guaranteed, assumed, reinsured, or performed the
4 contractual obligations of the insolvent or impaired insurer
5 under a covered policy or contract that do not materially
6 affect the economic values or economic benefits of the covered
7 policy or contract.

8 (Source: P.A. 96-1450, eff. 8-20-10.)

9 (215 ILCS 5/531.05) (from Ch. 73, par. 1065.80-5)

10 Sec. 531.05. Definitions. As used in this Act:

11 "Account" means either of the 2 ~~3~~ accounts created under
12 Section 531.06.

13 "Association" means the Illinois Life and Health Insurance
14 Guaranty Association created under Section 531.06.

15 "Authorized assessment" or the term "authorized" when used
16 in the context of assessments means a resolution by the Board
17 of Directors has been passed whereby an assessment shall be
18 called immediately or in the future from member insurers for a
19 specified amount. An assessment is authorized when the
20 resolution is passed.

21 "Benefit plan" means a specific employee, union, or
22 association of natural persons benefit plan.

23 "Called assessment" or the term "called" when used in the
24 context of assessments means that a notice has been issued by
25 the Association to member insurers requiring that an authorized

1 assessment be paid within the time frame set forth within the
2 notice. An authorized assessment becomes a called assessment
3 when notice is mailed by the Association to member insurers.

4 "Director" means the Director of Insurance of this State.

5 "Contractual obligation" means any obligation under a
6 policy or contract or certificate under a group policy or
7 contract, or portion thereof for which coverage is provided
8 under Section 531.03.

9 "Covered person" means any person who is entitled to the
10 protection of the Association as described in Section 531.02.

11 "Covered policy" means any policy or contract within the
12 scope of this Article under Section 531.03.

13 "Extra-contractual claims" shall include, for example,
14 claims relating to bad faith in the payment of claims, punitive
15 or exemplary damages, or attorneys' fees and costs.

16 "Impaired insurer" means (A) a member insurer which, after
17 the effective date of this amendatory Act of the 96th General
18 Assembly, is not an insolvent insurer, and is placed under an
19 order of rehabilitation or conservation by a court of competent
20 jurisdiction or (B) a member insurer deemed by the Director
21 after the effective date of this amendatory Act of the 96th
22 General Assembly to be potentially unable to fulfill its
23 contractual obligations and not an insolvent insurer.

24 "Insolvent insurer" means a member insurer that, after the
25 effective date of this amendatory Act of the 96th General
26 Assembly, is placed under a final order of liquidation by a

1 court of competent jurisdiction with a finding of insolvency.

2 "Member insurer" means an insurer licensed or holding a
3 certificate of authority to transact in this State any kind of
4 insurance for which coverage is provided under Section 531.03
5 of this Code and includes an insurer whose license or
6 certificate of authority in this State may have been suspended,
7 revoked, not renewed, or voluntarily withdrawn or whose
8 certificate of authority may have been suspended pursuant to
9 Section 119 of this Code, but does not include:

10 (1) a hospital or medical service organization,
11 whether profit or nonprofit;

12 (2) a health maintenance organization;

13 (3) any burial society organized under Article XIX of
14 this Code, any fraternal benefit society organized under
15 Article XVII of this Code, any mutual benefit association
16 organized under Article XVIII of this Code, and any foreign
17 fraternal benefit society licensed under Article VI of this
18 Code ~~or a fraternal benefit society;~~

19 (4) a mandatory State pooling plan;

20 (5) a mutual assessment company or other person that
21 operates on an assessment basis;

22 (6) an insurance exchange;

23 (7) an organization that is permitted to issue
24 charitable gift annuities pursuant to Section 121-2.10 of
25 this Code;

26 (8) any health services plan corporation established

1 pursuant to the Voluntary Health Services Plans Act;

2 (9) any dental service plan corporation established
3 pursuant to the Dental Service Plan Act; or

4 (10) an entity similar to any of the above.

5 "Moody's Corporate Bond Yield Average" means the Monthly
6 Average Corporates as published by Moody's Investors Service,
7 Inc., or any successor thereto.

8 "Owner" of a policy or contract and "policy owner" and
9 "contract owner" mean the person who is identified as the legal
10 owner under the terms of the policy or contract or who is
11 otherwise vested with legal title to the policy or contract
12 through a valid assignment completed in accordance with the
13 terms of the policy or contract and properly recorded as the
14 owner on the books of the insurer. The terms owner, contract
15 owner, and policy owner do not include persons with a mere
16 beneficial interest in a policy or contract.

17 "Person" means an individual, corporation, limited
18 liability company, partnership, association, governmental body
19 or entity, or voluntary organization.

20 "Plan sponsor" means:

21 (1) the employer in the case of a benefit plan
22 established or maintained by a single employer;

23 (2) the employee organization in the case of a benefit
24 plan established or maintained by an employee
25 organization; or

26 (3) in a case of a benefit plan established or

1 maintained by 2 or more employers or jointly by one or more
2 employers and one or more employee organizations, the
3 association, committee, joint board of trustees, or other
4 similar group of representatives of the parties who
5 establish or maintain the benefit plan.

6 "Premiums" mean amounts or considerations, by whatever
7 name called, received on covered policies or contracts less
8 returned premiums, considerations, and deposits and less
9 dividends and experience credits.

10 "Premiums" does not include:

11 (A) amounts or considerations received for policies or
12 contracts or for the portions of policies or contracts for
13 which coverage is not provided under Section 531.03 of this
14 Code except that assessable premium shall not be reduced on
15 account of the provisions of subparagraph (iii) of
16 paragraph (b) of subsection (2) ~~(a)~~ of Section 531.03 of
17 this Code relating to interest limitations and the
18 provisions of paragraph (b) of subsection (3), subsection
19 (3.1), or subsection (3.2) of Section 531.03 relating to
20 limitations with respect to one individual, one
21 participant, and one contract owner;

22 (B) premiums in excess of \$5,000,000 on an unallocated
23 annuity contract not issued under a governmental
24 retirement benefit plan (or its trustee) established under
25 Section 401, 403(b) or 457 of the United States Internal
26 Revenue Code; or

1 (C) with respect to multiple nongroup policies of life
2 insurance owned by one owner, whether the policy owner is
3 an individual, firm, corporation, or other person, and
4 whether the persons insured are officers, managers,
5 employees, or other persons, premiums in excess of
6 \$5,000,000 with respect to these policies or contracts,
7 regardless of the number of policies or contracts held by
8 the owner.

9 "Principal place of business" of a plan sponsor or a person
10 other than a natural person means the single state in which the
11 natural persons who establish policy for the direction,
12 control, and coordination of the operations of the entity as a
13 whole primarily exercise that function, determined by the
14 Association in its reasonable judgment by considering the
15 following factors:

16 (A) the state in which the primary executive and
17 administrative headquarters of the entity is located;

18 (B) the state in which the principal office of the
19 chief executive officer of the entity is located;

20 (C) the state in which the board of directors (or
21 similar governing person or persons) of the entity conducts
22 the majority of its meetings;

23 (D) the state in which the executive or management
24 committee of the board of directors (or similar governing
25 person or persons) of the entity conducts the majority of
26 its meetings;

1 (E) the state from which the management of the overall
2 operations of the entity is directed; and

3 (F) in the case of a benefit plan sponsored by
4 affiliated companies comprising a consolidated
5 corporation, the state in which the holding company or
6 controlling affiliate has its principal place of business
7 as determined using the above factors.

8 However, in the case of a plan sponsor, if more than 50% of
9 the participants in the benefit plan are employed in a single
10 state, that state shall be deemed to be the principal place of
11 business of the plan sponsor.

12 The principal place of business of a plan sponsor of a
13 benefit plan described in paragraph (3) of the definition of
14 "plan sponsor" ~~this Section~~ shall be deemed to be the principal
15 place of business of the association, committee, joint board of
16 trustees, or other similar group of representatives of the
17 parties who establish or maintain the benefit plan that, in
18 lieu of a specific or clear designation of a principal place of
19 business, shall be deemed to be the principal place of business
20 of the employer or employee organization that has the largest
21 investment in the benefit plan in question.

22 "Receivership court" means the court in the insolvent or
23 impaired insurer's state having jurisdiction over the
24 conservation, rehabilitation, or liquidation of the insurer.

25 "Resident" means a person to whom a contractual obligation
26 is owed and who resides in this State on the date of entry of a

1 court order that determines a member insurer to be an impaired
2 insurer or a court order that determines a member insurer to be
3 an insolvent insurer. A person may be a resident of only one
4 state, which in the case of a person other than a natural
5 person shall be its principal place of business. Citizens of
6 the United States that are either (i) residents of foreign
7 countries or (ii) residents of United States possessions,
8 territories, or protectorates that do not have an association
9 similar to the Association created by this Article, shall be
10 deemed residents of the state of domicile of the insurer that
11 issued the policies or contracts.

12 "Structured settlement annuity" means an annuity purchased
13 in order to fund periodic payments for a plaintiff or other
14 claimant in payment for or with respect to personal injury
15 suffered by the plaintiff or other claimant.

16 "State" means a state, the District of Columbia, Puerto
17 Rico, and a United States possession, territory, or
18 protectorate.

19 "Supplemental contract" means a written agreement entered
20 into for the distribution of proceeds under a life, health, or
21 annuity policy or a life, health, or annuity contract.

22 "Unallocated annuity contract" means any annuity contract
23 or group annuity certificate which is not issued to and owned
24 by an individual, except to the extent of any annuity benefits
25 guaranteed to an individual by an insurer under such contract
26 or certificate.

1 (Source: P.A. 96-1450, eff. 8-20-10.)

2 (215 ILCS 5/531.07) (from Ch. 73, par. 1065.80-7)

3 Sec. 531.07. Board of Directors.→ The board of directors
4 of the Association consists of not less than 7 nor more than 11
5 members serving terms as established in the plan of operation.
6 The insurer members ~~insurers~~ of the board are to be selected by
7 member insurers subject to the approval of the Director. In
8 addition, 2 persons who must be public representatives may be
9 appointed by the Director to the board of directors. A public
10 representative may not be an officer, director, or employee of
11 an insurance company or any person engaged in the business of
12 insurance. Vacancies on the board must be filled for the
13 remaining period of the term in the manner described in the
14 plan of operation.

15 In approving selections or in appointing members to the
16 board, the Director must consider, whether all member insurers
17 are fairly represented.

18 Members of the board may be reimbursed from the assets of
19 the Association for expenses incurred by them as members of the
20 board of directors but members of the board may not otherwise
21 be compensated by the Association for their services.

22 (Source: P.A. 96-1450, eff. 8-20-10.)

23 (215 ILCS 5/531.08) (from Ch. 73, par. 1065.80-8)

24 Sec. 531.08. Powers and duties of the Association.

1 ~~(a)~~ In addition to the powers and duties enumerated in
2 other Sections of this Article:

3 (1) If a member insurer is an impaired insurer, then
4 the Association may, in its discretion and subject to any
5 conditions imposed by the Association that do not impair
6 the contractual obligations of the impaired insurer and
7 that are approved by the Director:

8 (a) ~~(A)~~ guarantee, assume, or reinsure or cause to
9 be guaranteed, assumed, or reinsured, any or all of the
10 policies or contracts of the impaired insurer; or

11 (b) ~~(B)~~ provide such money, pledges, loans, notes,
12 guarantees, or other means as are proper to effectuate
13 paragraph (a) ~~(A)~~ and assure payment of the contractual
14 obligations of the impaired insurer pending action
15 under paragraph (a) ~~(A)~~.

16 (2) If a member insurer is an insolvent insurer, then
17 the Association shall, in its discretion, either:

18 (a) ~~(A)~~ guaranty, assume, or reinsure or cause to
19 be guaranteed, assumed, or reinsured the policies or
20 contracts of the insolvent insurer or assure payment of
21 the contractual obligations of the insolvent insurer
22 and provide money, pledges, loans, notes, guarantees,
23 or other means reasonably necessary to discharge the
24 Association's duties; or

25 (b) ~~(B)~~ provide benefits and coverages in
26 accordance with the following provisions:

1 (i) with respect to life and health insurance
2 policies and annuities, ensure payment of benefits
3 for premiums identical to the premiums and
4 benefits (except for terms of conversion and
5 renewability) that would have been payable under
6 the policies or contracts of the insolvent insurer
7 for claims incurred:

8 (A) ~~(a)~~ with respect to group policies and
9 contracts, not later than the earlier of the
10 next renewal date under those policies or
11 contracts or 45 days, but in no event less than
12 30 days, after the date on which the
13 Association becomes obligated with respect to
14 the policies and contracts;

15 (B) ~~(b)~~ with respect to nongroup policies,
16 contracts, and annuities not later than the
17 earlier of the next renewal date (if any) under
18 the policies or contracts or one year, but in
19 no event less than 30 days, from the date on
20 which the Association becomes obligated with
21 respect to the policies or contracts;

22 (ii) make diligent efforts to provide all
23 known insureds or annuitants (for nongroup
24 policies and contracts), or group policy owners
25 with respect to group policies and contracts, 30
26 days notice of the termination (pursuant to

1 subparagraph (i) of this paragraph (b) ~~(B)~~ of the
2 benefits provided;

3 (iii) with respect to nongroup life and health
4 insurance policies and annuities covered by the
5 Association, make available to each known insured
6 or annuitant, or owner if other than the insured or
7 annuitant, and with respect to an individual
8 formerly insured or formerly an annuitant under a
9 group policy who is not eligible for replacement
10 group coverage, make available substitute coverage
11 on an individual basis in accordance with the
12 provisions of subparagraph (iv) ~~paragraph (3)~~, if
13 the insureds or annuitants had a right under law or
14 the terminated policy or annuity to convert
15 coverage to individual coverage or to continue an
16 individual policy or annuity in force until a
17 specified age or for a specified time, during which
18 the insurer had no right unilaterally to make
19 changes in any provision of the policy or annuity
20 or had a right only to make changes in premium by
21 class.

22 (iv) ~~(b)~~ In providing the substitute coverage
23 required under subparagraph (iii) of this
24 subsection (2), ~~of paragraph (B) of item (2) of~~
25 ~~subsection (a) of this Section,~~ the Association
26 may offer either to reissue the terminated

1 coverage or to issue an alternative policy.

2 Alternative or reissued policies shall be
3 offered without requiring evidence of
4 insurability, and shall not provide for any
5 waiting period or exclusion that would not have
6 applied under the terminated policy.

7 The Association may reinsure any alternative
8 or reissued policy.

9 Alternative policies adopted by the
10 Association shall be subject to the approval of the
11 Director. The Association may adopt alternative
12 policies of various types for future insurance
13 without regard to any particular impairment or
14 insolvency.

15 (v) Alternative policies shall contain at
16 least the minimum statutory provisions required in
17 this State and provide benefits that shall not be
18 unreasonable in relation to the premium charged.
19 The Association shall set the premium in
20 accordance with a table of rates which it shall
21 adopt. The premium shall reflect the amount of
22 insurance to be provided and the age and class of
23 risk of each insured, but shall not reflect any
24 changes in the health of the insured after the
25 original policy was last underwritten.

26 Any alternative policy issued by the

1 Association shall provide coverage of a type
2 similar to that of the policy issued by the
3 impaired or insolvent insurer, as determined by
4 the Association.

5 (vi) ~~(e)~~ If the Association elects to reissue
6 terminated coverage at a premium rate different
7 from that charged under the terminated policy, the
8 premium shall be set by the Association in
9 accordance with the amount of insurance provided
10 and the age and class of risk, subject to approval
11 of the Director or by a court of competent
12 jurisdiction.

13 (vii) ~~(d)~~ The Association's obligations with
14 respect to coverage under any policy of the
15 impaired or insolvent insurer or under any
16 reissued or alternative policy shall cease on the
17 date such coverage or policy is replaced by another
18 similar policy by the policyholder, the insured,
19 or the Association.

20 (viii) ~~(e)~~ When proceeding under this Section
21 with respect to any policy or contract carrying
22 guaranteed minimum interest rates, the Association
23 shall assure the payment or crediting of a rate of
24 interest consistent with subparagraph
25 (2) (b) (iii) ~~(B)~~ of Section 531.03.

26 (3) ~~(f)~~ Nonpayment of premiums thirty-one days after

1 the date required under the terms of any guaranteed,
2 assumed, alternative or reissued policy or contract or
3 substitute coverage shall terminate the Association's
4 obligations under such policy or coverage under this Act
5 with respect to such policy or coverage, except with
6 respect to any claims incurred or any net cash surrender
7 value which may be due in accordance with the provisions of
8 this Act.

9 (4) ~~(g)~~ Premiums due for coverage after entry of an
10 order of liquidation of an insolvent insurer shall belong
11 to and be payable at the direction of the Association, and
12 the Association shall be liable for unearned premiums due
13 to policy or contract owners arising after the entry of
14 such order.

15 (5) ~~(h)~~ In carrying out its duties under subsection
16 ~~paragraph (2) of subsection (a)~~ of this Section, the
17 Association may:

18 (a) ~~(1)~~ subject to approval by a court ~~in this~~
19 ~~State~~, impose permanent policy or contract liens in
20 connection with a guarantee, assumption, or
21 reinsurance agreement if the Association finds that
22 the amounts which can be assessed under this Article
23 are less than the amounts needed to assure full and
24 prompt performance of the Association's duties under
25 this Article or that the economic or financial
26 conditions as they affect member insurers are

1 sufficiently adverse to render the imposition of such
2 permanent policy or contract liens to be in the public
3 interest; or

4 (b) ~~(2)~~ subject to approval by a court ~~in this~~
5 ~~State~~, impose temporary moratoriums or liens on
6 payments of cash values and policy loans or any other
7 right to withdraw funds held in conjunction with
8 policies or contracts in addition to any contractual
9 provisions for deferral of cash or policy loan value.

10 In addition, in the event of a temporary moratorium or
11 moratorium charge imposed by the receivership court on
12 payment of cash values or policy loans or on any other
13 right to withdraw funds held in conjunction with
14 policies or contracts, out of the assets of the
15 impaired or insolvent insurer, the Association may
16 defer the payment of cash values, policy loans, or
17 other rights by the Association for the period of the
18 moratorium or moratorium charge imposed by the
19 receivership court, except for claims covered by the
20 Association to be paid in accordance with a hardship
21 procedure established by the liquidator or
22 rehabilitator and approved by the receivership court.

23 (6) ~~(1)~~ There shall be no liability on the part of and
24 no cause of action shall arise against the Association or
25 against any transferee from the Association in connection
26 with the transfer by reinsurance or otherwise of all or any

1 part of an impaired or insolvent insurer's business by
2 reason of any action taken or any failure to take any
3 action by the impaired or insolvent insurer at any time.

4 (7) ~~(j)~~ If the Association fails to act within a
5 reasonable period of time as provided in subsection (2) of
6 this Section with respect to an insolvent insurer, the
7 Director shall have the powers and duties of the
8 Association under this Act with regard to such insolvent
9 insurers.

10 (8) ~~(k)~~ The Association or its designated
11 representatives may render assistance and advice to the
12 Director, upon his request, concerning rehabilitation,
13 payment of claims, continuations of coverage, or the
14 performance of other contractual obligations of any
15 impaired or insolvent insurer.

16 (9) ~~(l)~~ The Association shall have standing to appear
17 or intervene before a court or agency in this State with
18 jurisdiction over an impaired or insolvent insurer
19 concerning which the Association is or may become obligated
20 under this Article or with jurisdiction over any person or
21 property against which the Association may have rights
22 through subrogation or otherwise. Standing shall extend to
23 all matters germane to the powers and duties of the
24 Association, including, but not limited to, proposals for
25 reinsuring, modifying, or guaranteeing the policies or
26 contracts of the impaired or insolvent insurer and the

1 determination of the policies or contracts and contractual
2 obligations. The Association shall also have the right to
3 appear or intervene before a court or agency in another
4 state with jurisdiction over an impaired or insolvent
5 insurer for which the Association is or may become
6 obligated or with jurisdiction over any person or property
7 against whom the Association may have rights through
8 subrogation or otherwise.

9 (10) (a) ~~(m) (1)~~ A person receiving benefits under this
10 Article shall be deemed to have assigned the rights under
11 and any causes of action against any person for losses
12 arising under, resulting from, or otherwise relating to the
13 covered policy or contract to the Association to the extent
14 of the benefits received because of this Article, whether
15 the benefits are payments of or on account of contractual
16 obligations, continuation of coverage, or provision of
17 substitute or alternative coverages. The Association may
18 require an assignment to it of such rights and cause of
19 action by any payee, policy, or contract owner,
20 beneficiary, insured, or annuitant as a condition
21 precedent to the receipt of any right or benefits conferred
22 by this Article upon the person.

23 (b) ~~(2)~~ The subrogation rights of the Association
24 under this subsection have the same priority against the
25 assets of the impaired or insolvent insurer as that
26 possessed by the person entitled to receive benefits under

1 this Article.

2 (c) ~~(3)~~ In addition to paragraphs (a) ~~(1)~~ and (b) ~~(2)~~,
3 the Association shall have all common law rights of
4 subrogation and any other equitable or legal remedy that
5 would have been available to the impaired or insolvent
6 insurer or owner, beneficiary, or payee of a policy or
7 contract with respect to the policy or contracts, including
8 without limitation, in the case of a structured settlement
9 annuity, any rights of the owner, beneficiary, or payee of
10 the annuity to the extent of benefits received pursuant to
11 this Article, against a person originally or by succession
12 responsible for the losses arising from the personal injury
13 relating to the annuity or payment therefor, excepting any
14 such person responsible solely by reason of serving as an
15 assignee in respect of a qualified assignment under
16 Internal Revenue Code Section 130.

17 (d) ~~(4)~~ If the preceding provisions of this subsection
18 (10) ~~(1)~~ are invalid or ineffective with respect to any
19 person or claim for any reason, then the amount payable by
20 the Association with respect to the related covered
21 obligations shall be reduced by the amount realized by any
22 other person with respect to the person or claim that is
23 attributable to the policies, or portion thereof, covered
24 by the Association.

25 (e) ~~(5)~~ If the Association has provided benefits with
26 respect to a covered obligation and a person recovers

1 amounts as to which the Association has rights as described
2 in the preceding paragraphs of this subsection (10), then
3 the person shall pay to the Association the portion of the
4 recovery attributable to the policies, or portion thereof,
5 covered by the Association.

6 (11) ~~(n)~~ The Association may:

7 (a) ~~(1)~~ Enter into such contracts as are necessary
8 or proper to carry out the provisions and purposes of
9 this Article.

10 (b) ~~(2)~~ Sue or be sued, including taking any legal
11 actions necessary or proper for recovery of any unpaid
12 assessments under Section 531.09. The Association
13 shall not be liable for punitive or exemplary damages.

14 (c) ~~(3)~~ Borrow money to effect the purposes of
15 this Article. Any notes or other evidence of
16 indebtedness of the Association not in default are
17 legal investments for domestic insurers and may be
18 carried as admitted assets.

19 (d) ~~(4)~~ Employ or retain such persons as are
20 necessary to handle the financial transactions of the
21 Association, and to perform such other functions as
22 become necessary or proper under this Article.

23 (e) ~~(5)~~ Negotiate and contract with any
24 liquidator, rehabilitator, conservator, or ancillary
25 receiver to carry out the powers and duties of the
26 Association.

1 (f) ~~(6)~~ Take such legal action as may be necessary
2 to avoid payment of improper claims.

3 (g) ~~(7)~~ Exercise, for the purposes of this Article
4 and to the extent approved by the Director, the powers
5 of a domestic life or health insurer, but in no case
6 may the Association issue insurance policies or
7 annuity contracts other than those issued to perform
8 the contractual obligations of the impaired or
9 insolvent insurer.

10 (h) ~~(8)~~ Exercise all the rights of the Director
11 under Section 193(4) of this Code with respect to
12 covered policies after the association becomes
13 obligated by statute.

14 (i) ~~(9)~~ Request information from a person seeking
15 coverage from the Association in order to aid the
16 Association in determining its obligations under this
17 Article with respect to the person, and the person
18 shall promptly comply with the request.

19 (j) ~~(10)~~ Take other necessary or appropriate
20 action to discharge its duties and obligations under
21 this Article or to exercise its powers under this
22 Article.

23 (12) ~~(e)~~ With respect to covered policies for which
24 the Association becomes obligated after an entry of an
25 order of liquidation or rehabilitation, the Association
26 may elect to succeed to the rights of the insolvent insurer

1 arising after the date of the order of liquidation or
2 rehabilitation under any contract of reinsurance to which
3 the insolvent insurer was a party, to the extent that such
4 contract provides coverage for losses occurring after the
5 date of the order of liquidation or rehabilitation. As a
6 condition to making this election, the Association must pay
7 all unpaid premiums due under the contract for coverage
8 relating to periods before and after the date of the order
9 of liquidation or rehabilitation.

10 (13) ~~(p)~~ A deposit in this State, held pursuant to law
11 or required by the Director for the benefit of creditors,
12 including policy owners, not turned over to the domiciliary
13 liquidator upon the entry of a final order of liquidation
14 or order approving a rehabilitation plan of an insurer
15 domiciled in this State or in a reciprocal state, pursuant
16 to Article XIII 1/2 of this Code, shall be promptly paid to
17 the Association. The Association shall be entitled to
18 retain a portion of any amount so paid to it equal to the
19 percentage determined by dividing the aggregate amount of
20 policy owners' claims related to that insolvency for which
21 the Association has provided statutory benefits by the
22 aggregate amount of all policy owners' claims in this State
23 related to that insolvency and shall remit to the
24 domiciliary receiver the amount so paid to the Association
25 less the amount retained pursuant to this subsection ~~(13)~~.
26 Any amount so paid to the Association and retained by it

1 shall be treated as a distribution of estate assets
2 pursuant to applicable State receivership law dealing with
3 early access disbursements.

4 (14) ~~(e)~~ The Board of Directors of the Association
5 shall have discretion and may exercise reasonable business
6 judgment to determine the means by which the Association is
7 to provide the benefits of this Article in an economical
8 and efficient manner.

9 (15) ~~(r)~~ Where the Association has arranged or offered
10 to provide the benefits of this Article to a covered person
11 under a plan or arrangement that fulfills the Association's
12 obligations under this Article, the person shall not be
13 entitled to benefits from the Association in addition to or
14 other than those provided under the plan or arrangement.

15 (16) ~~(s)~~ Venue in a suit against the Association
16 arising under the Article shall be in Cook County. The
17 Association shall not be required to give any appeal bond
18 in an appeal that relates to a cause of action arising
19 under this Article.

20 (17) ~~(t)~~ The Association may join an organization of
21 one or more other State associations of similar purposes to
22 further the purposes and administer the powers and duties
23 of the Association.

24 (18) ~~(u)~~ In carrying out its duties in connection with
25 guaranteeing, assuming, or reinsuring policies or
26 contracts under subsections (1) or (2), the Association

1 may, subject to approval of the receivership court, issue
2 substitute coverage for a policy or contract that provides
3 an interest rate, crediting rate, or similar factor
4 determined by use of an index or other external reference
5 stated in the policy or contract employed in calculating
6 returns or changes in value by issuing an alternative
7 policy or contract in accordance with the following
8 provisions:

9 (a) ~~(1)~~ in lieu of the index or other external
10 reference provided for in the original policy or
11 contract, the alternative policy or contract provides
12 for (i) a fixed interest rate, or (ii) payment of
13 dividends with minimum guarantees, or (iii) a
14 different method for calculating interest or changes
15 in value;

16 (b) ~~(2)~~ there is no requirement for evidence of
17 insurability, waiting period, or other exclusion that
18 would not have applied under the replaced policy or
19 contract; and

20 (c) ~~(3)~~ the alternative policy or contract is
21 substantially similar to the replaced policy or
22 contract in all other material terms.

23 (Source: P.A. 96-1450, eff. 8-20-10; 97-333, eff. 8-12-11.)

24 (215 ILCS 5/531.09) (from Ch. 73, par. 1065.80-9)

25 Sec. 531.09. Assessments.

1 (1) For the purpose of providing the funds necessary to
2 carry out the powers and duties of the Association, the board
3 of directors shall assess the member insurers, separately for
4 each account, at such times and for such amounts as the board
5 finds necessary. Assessments shall be due not less than 30 days
6 after written notice to the member insurers and shall accrue
7 interest from the due date at such adjusted rate as is
8 established under Section 6621 of Chapter 26 of the United
9 States Code and such interest shall be compounded daily.

10 (2) There shall be 2 classes of assessments, as follows:

11 (a) Class A assessments shall be made for the purpose
12 of meeting administrative costs and other general expenses
13 and examinations conducted under the authority of the
14 Director under subsection (5) of Section 531.12.

15 (b) Class B assessments shall be made to the extent
16 necessary to carry out the powers and duties of the
17 Association under Section 531.08 with regard to an impaired
18 or insolvent domestic insurer or insolvent foreign or alien
19 insurers.

20 (3) (a) The amount of any Class A assessment shall be
21 determined at the discretion of the board of directors and such
22 assessments shall be authorized and called on a non-pro rata
23 basis. The amount of any Class B assessment shall be allocated
24 for assessment purposes among the accounts and subaccounts
25 pursuant to an allocation formula which may be based on the
26 premiums or reserves of the impaired or insolvent insurer or

1 any other standard deemed by the board in its sole discretion
2 as being fair and reasonable under the circumstances.

3 (b) Class B assessments against member insurers for each
4 account and subaccount shall be in the proportion that the
5 premiums received on business in this State by each assessed
6 member insurer on policies or contracts covered by each account
7 or subaccount for the three most recent calendar years for
8 which information is available preceding the year in which the
9 insurer became impaired or insolvent, as the case may be, bears
10 to such premiums received on business in this State for such
11 calendar years by all assessed member insurers.

12 (c) Assessments for funds to meet the requirements of the
13 Association with respect to an impaired or insolvent insurer
14 shall not be made until necessary to implement the purposes of
15 this Article. Classification of assessments under subsection
16 (2) and computations of assessments under this subsection shall
17 be made with a reasonable degree of accuracy, recognizing that
18 exact determinations may not always be possible.

19 (4) The Association may abate or defer, in whole or in
20 part, the assessment of a member insurer if, in the opinion of
21 the board, payment of the assessment would endanger the ability
22 of the member insurer to fulfill its contractual obligations.
23 In the event an assessment against a member insurer is abated
24 or deferred in whole or in part the amount by which the
25 assessment is abated or deferred may be assessed against the
26 other member insurers in a manner consistent with the basis for

1 assessments set forth in this Section. Once the conditions that
2 caused a deferral have been removed or rectified, the member
3 insurer shall pay all assessments that were deferred pursuant
4 to a repayment plan approved by the Association.

5 (5) (a) (i) Subject to the provisions of subparagraph (ii)
6 of this paragraph, the total of all assessments authorized by
7 the Association with respect to a member insurer for each
8 subaccount of the life insurance and annuity account and for
9 the health account shall not in one calendar year exceed 2% of
10 that member insurer's average annual premiums received in this
11 State on the policies and contracts covered by the subaccount
12 or account during the 3 calendar years preceding the year in
13 which the insurer became an impaired or insolvent insurer.

14 (ii) If 2 or more assessments are authorized in one
15 calendar year with respect to insurers that become impaired or
16 insolvent in different calendar years, the average annual
17 premiums for purposes of the aggregate assessment percentage
18 limitation referenced in subparagraph (a) of this paragraph
19 shall be equal and limited to the higher of the 3-year average
20 annual premiums for the applicable subaccount or account as
21 calculated pursuant to this Section.

22 (iii) If the maximum assessment, together with the other
23 assets of the Association in an account, does not provide in
24 one year in either account an amount sufficient to carry out
25 the responsibilities of the Association, the necessary
26 additional funds shall be assessed as soon thereafter as

1 permitted by this Article.

2 (b) The board may provide in the plan of operation a method
3 of allocating funds among claims, whether relating to one or
4 more impaired or insolvent insurers, when the maximum
5 assessment will be insufficient to cover anticipated claims.

6 (c) If the maximum assessment for a subaccount of the life
7 insurance and annuity account in one year does not provide an
8 amount sufficient to carry out the responsibilities of the
9 Association, then pursuant to paragraph (b) of subsection (3),
10 the board shall assess the other subaccounts of the life and
11 annuity account for the necessary additional amount, subject to
12 the maximum stated in paragraph (a) of this subsection.

13 (6) The board may, by an equitable method as established in
14 the plan of operation, refund to member insurers, in proportion
15 to the contribution of each insurer to that account, the amount
16 by which the assets of the account exceed the amount the board
17 finds is necessary to carry out during the coming year the
18 obligations of the Association with regard to that account,
19 including assets accruing from net realized gains and income
20 from investments. A reasonable amount may be retained in any
21 account to provide funds for the continuing expenses of the
22 Association and for future losses.

23 (7) An assessment is deemed to occur on the date upon which
24 the board votes such assessment. The board may defer calling
25 the payment of the assessment or may call for payment in one or
26 more installments.

1 (8) It is proper for any member insurer, in determining its
2 premium rates and policyowner dividends as to any kind of
3 insurance within the scope of this Article, to consider the
4 amount reasonably necessary to meet its assessment obligations
5 under this Article.

6 (9) The Association must issue to each insurer paying a
7 Class B assessment under this Article a certificate of
8 contribution, in a form acceptable to the Director, for the
9 amount of the assessment so paid. All outstanding certificates
10 are of equal dignity and priority without reference to amounts
11 or dates of issue. A certificate of contribution may be shown
12 by the insurer in its financial statement as an asset in such
13 form and for such amount, if any, and period of time as the
14 Director may approve, provided the insurer shall in any event
15 at its option have the right to show a certificate of
16 contribution as an admitted asset at percentages of the
17 original face amount for calendar years as follows:

18 100% for the calendar year after the year of issuance;

19 80% for the second calendar year after the year of
20 issuance;

21 60% for the third calendar year after the year of issuance;

22 40% for the fourth calendar year after the year of
23 issuance;

24 20% for the fifth calendar year after the year of issuance.

25 (10) The Association may request information of member
26 insurers in order to aid in the exercise of its power under

1 this Section and member insurers shall promptly comply with a
2 request.

3 (Source: P.A. 95-86, eff. 9-25-07 (changed from 1-1-08 by P.A.
4 95-632); 96-1450, eff. 8-20-10.)

5 (215 ILCS 5/531.10) (from Ch. 73, par. 1065.80-10)
6 Sec. 531.10. Plan of Operation.†

7 (1) (a) The Association must submit to the Director a plan
8 of operation and any amendments thereto necessary or suitable
9 to assure the fair, reasonable, and equitable administration of
10 the Association. The plan of operation and any amendments
11 thereto become effective upon approval in writing by the
12 Director.

13 (b) If the Association fails to submit a suitable plan of
14 operation within 180 days following the effective date of this
15 Article or if at any time thereafter the Association fails to
16 submit suitable amendments to the plan, the Director may, after
17 notice and hearing, adopt and promulgate such reasonable rules
18 as are necessary or advisable to effectuate the provisions of
19 this Article. Such rules are in force until modified by the
20 Director or superseded by a plan submitted by the Association
21 and approved by the Director.

22 (2) All member insurers must comply with the plan of
23 operation.

24 (3) The plan of operation must, in addition to requirements
25 enumerated elsewhere in this Article:

1 (a) Establish procedures for handling the assets of the
2 Association;

3 (b) Establish the amount and method of reimbursing
4 members of the board of directors under Section 531.07;

5 (c) Establish regular places and times for meetings of
6 the board of directors;

7 (d) Establish procedures for records to be kept of all
8 financial transactions of the Association, its agents, and
9 the board of directors;

10 (e) Establish the procedures whereby selections for
11 the board of directors will be made and submitted to the
12 Director;

13 (f) Establish any additional procedures for
14 assessments under Section 531.09; and

15 (g) Contain additional provisions necessary or proper
16 for the execution of the powers and duties of the
17 Association.

18 (4) The plan of operation shall establish a procedure for
19 protest by any member insurer of assessments made by the
20 Association pursuant to Section 531.09. Such procedures shall
21 require that:

22 (a) a member insurer that wishes to protest all or part
23 of an assessment shall pay when due the full amount of the
24 assessment as set forth in the notice provided by the
25 Association. The payment shall be available to meet
26 Association obligations during the pendency of the protest

1 or any subsequent appeal. Payment shall be accompanied by a
2 statement in writing that the payment is made under protest
3 and setting forth a brief statement of the grounds for the
4 protest;

5 (b) within 30 days following the payment of an
6 assessment under protest by any protesting member insurer,
7 the Association must notify the member insurer in writing
8 of its determination with respect to the protest unless the
9 Association notifies the member that additional time is
10 required to resolve the issues raised by the protest;

11 (c) in the event the Association determines that the
12 protesting member insurer is entitled to a refund, such
13 refund shall be made within 30 days following the date upon
14 which the Association makes its determination;

15 (d) the decision of the Association with respect to a
16 protest may be appealed to the Director pursuant to Section
17 531.11(3);

18 (e) in the alternative to rendering a decision with
19 respect to any protest based on a question regarding the
20 assessment base, the Association may refer such protests to
21 the Director for final decision, with or without a
22 recommendation from the Association; and

23 (f) interest on any refund due a protesting member
24 insurer shall be paid at the rate actually earned by the
25 Association.

26 (5) The plan of operation may provide that any or all

1 powers and duties of the Association, except those under
2 paragraph (c) of subsection (11) ~~(10)~~ of Section 531.08 and
3 Section 531.09 are delegated to a corporation, association or
4 other organization which performs or will perform functions
5 similar to those of this Association, or its equivalent, in 2
6 or more states. Such a corporation, association or organization
7 shall be reimbursed for any payments made on behalf of the
8 Association and shall be paid for its performance of any
9 function of the Association. A delegation under this subsection
10 shall take effect only with the approval of both the Board of
11 Directors and the Director, and may be made only to a
12 corporation, association or organization which extends
13 protection not substantially less favorable and effective than
14 that provided by this Act.

15 (Source: P.A. 96-1450, eff. 8-20-10.)

16 (215 ILCS 5/531.14) (from Ch. 73, par. 1065.80-14)

17 Sec. 531.14. Miscellaneous Provisions.

18 (1) Nothing in this Article may be construed to reduce the
19 liability for unpaid assessments of the insured of an impaired
20 or insolvent insurer operating under a plan with assessment
21 liability.

22 (2) Records must be kept of all negotiations and meetings
23 in which the Association or its representatives are involved to
24 discuss the activities of the Association in carrying out its
25 powers and duties under Section 531.08. Records of such

1 negotiations or meetings may be made public only upon the
2 termination of a liquidation, rehabilitation, or conservation
3 proceeding involving the impaired or insolvent insurer, upon
4 the termination of the impairment or insolvency of the insurer,
5 or upon the order of a court of competent jurisdiction. Nothing
6 in this paragraph (2) limits the duty of the Association to
7 render a report of its activities under Section 531.15.

8 (3) For the purpose of carrying out its obligations under
9 this Article, the Association is deemed to be a creditor of the
10 impaired or insolvent insurer to the extent of assets
11 attributable to covered policies reduced by any amounts to
12 which the Association is entitled as subrogee (under subsection
13 (10) ~~paragraph (8)~~ of Section 531.08). All assets of the
14 impaired or insolvent insurer attributable to covered policies
15 must be used to continue all covered policies and pay all
16 contractual obligations of the impaired insurer as required by
17 this Article. "Assets attributable to covered policies", as
18 used in this paragraph (3), is that proportion of the assets
19 which the reserves that should have been established for such
20 policies bear to the reserve that should have been established
21 for all policies of insurance written by the impaired or
22 insolvent insurer.

23 (4) (a) Prior to the termination of any liquidation,
24 rehabilitation, or conservation proceeding, the court may take
25 into consideration the contributions of the respective
26 parties, including the Association, the shareholders and

1 policyowners of the impaired or insolvent insurer, and any
2 other party with a bona fide interest, in making an equitable
3 distribution of the ownership rights of such impaired or
4 insolvent insurer. In such a determination, consideration must
5 be given to the welfare of the policyholders of the continuing
6 or successor insurer.

7 (b) No distribution to stockholders, if any, of an impaired
8 or insolvent insurer may be made until and unless the total
9 amount of valid claims of the Association for funds expended
10 with interest in carrying out its powers and duties under
11 Section 531.08, with respect to such insurer have been fully
12 recovered by the Association.

13 (5) (a) If an order for liquidation or rehabilitation of an
14 insurer domiciled in this State has been entered, the receiver
15 appointed under such order has a right to recover on behalf of
16 the insurer, from any affiliate that controlled it, the amount
17 of distributions, other than stock dividends paid by the
18 insurer on its capital stock, made at any time during the 5
19 years preceding the petition for liquidation or rehabilitation
20 subject to the limitations of paragraphs (b) to (d).

21 (b) No such dividend is recoverable if the insurer shows
22 that when paid the distribution was lawful and reasonable, and
23 that the insurer did not know and could not reasonably have
24 known that the distribution might adversely affect the ability
25 of the insurer to fulfill its contractual obligations.

26 (c) Any person who as an affiliate that controlled the

1 insurer at the time the distributions were paid is liable up to
2 the amount of distributions he received. Any person who was an
3 affiliate that controlled the insurer at the time the
4 distributions were declared, is liable up to the amount of
5 distributions he would have received if they had been paid
6 immediately. If 2 persons are liable with respect to the same
7 distributions, they are jointly and severally liable.

8 (d) The maximum amount recoverable under subsection (5) of
9 this Section is the amount needed in excess of all other
10 available assets of the insolvent insurer to pay the
11 contractual obligations of the insolvent insurer.

12 (e) If any person liable under paragraph (c) of subsection
13 (5) of this Section is insolvent, all its affiliates that
14 controlled it at the time the dividend was paid are jointly and
15 severally liable for any resulting deficiency in the amount
16 recovered from the insolvent affiliate.

17 (6) As a creditor of the impaired or insolvent insurer as
18 established in subsection (3) of this Section and consistent
19 with subsection (2) of Section 205 of this Code, the
20 Association and other similar associations shall be entitled to
21 receive a disbursement of assets out of the marshaled assets,
22 from time to time as the assets become available to reimburse
23 it, as a credit against contractual obligations under this
24 Article. If the liquidator has not, within 120 days after a
25 final determination of insolvency of an insurer by the
26 receivership court, made an application to the court for the

1 approval of a proposal to disburse assets out of marshaled
2 assets to guaranty associations having obligations because of
3 the insolvency, then the Association shall be entitled to make
4 application to the receivership court for approval of its own
5 proposal to disburse these assets.

6 (Source: P.A. 96-1450, eff. 8-20-10.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law."